

COPY

IN THE CHANCERY COURT FOR LEWIS COUNTY, TENNESSEE
AT HOHENWALD

In re: Sentinel Trust Company

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Case No. 4781

**MOTION OF AMERICAN SENIOR LIVING LIMITED PARTNERSHIP AND
CHANCELLOR HEALTH PARTNERS, INC.
TO AMEND THE COURT'S ORDERS DATED JULY 19, 2004 APPROVING
(A) THE TRANSFER OF PRE-MAY 18 FIDUCIARY INVESTMENT ACCOUNTS AND
(B) TRANSFER OF PERSONAL ESTATE AND TRUSTS TO REPLACEMENT
EXECUTOR AND TRUSTEE, AND TO TRANSFER ALL VERIFIED ASSETS**

American Senior Living Limited Partnership ("ASLLP") and Chancellor Health Partners, Inc. ("Chancellor") respectfully submit this motion to amend the above-referenced orders of this Court (the "July 19 Orders").

As is more fully explained herein, ASLLP and Chancellor object to the transfers authorized by the July 19 Orders because the Receiver has refused to agree that it will not seek to collect its expenses from fiduciary assets, including the assets held in the account that has been referred to as the "SunTrust Pooled Account" in which ASLLP and Chancellor have an interest.

The premise of the motions upon which the above-referenced orders are based is the Receiver's representation that the funds in the investments subject to those motions were always kept separate from the SunTrust Pooled Account. However, that representation was incorrect. Accordingly, if this Court allows the transfer of the fiduciary assets at issue in the July 19 Orders, and it later authorizes paying the Receiver's fees and expenses from fiduciary assets (contrary to T.C.A. § 45-2-1502(f)), then persons with interests in the remaining fiduciary assets will be forced to pay a disproportionate share of the costs of the administration of this Receivership.

FILED

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JANET WILLIAMS, CLERK & MASTER
BY: *[Signature]*

In support of this motion, ASLLP and Chancellor state as follows:

1. By motions filed July 2, 2004, the Receiver filed its (A) Motion For Approval of Transfer Of Pre-May 18 Fiduciary Investment Accounts When Successor Paying Agent Or Trustee Is Appointed ("FIA Transfer Motion"); (B) Motion For Approval Of Transfer Of Personal Estate And Trusts To Replacement Executor And Trustee And To Transfer All Verified Investment Assets Of The Personal Estate Or Trusts To Those Replacements ("PE Transfer Motion"); and (C) Motion To Pay Operating Expenses Of Receivership From Pre-May 18, 2004 Funds In SunTrust "Pooled" Account ("Payment Motion").

2. ASLLP and Chancellor filed objections to these motions, which are incorporated by reference herein.

3. With respect to the Payment Motion, the Receiver sought to pay expenses from the SunTrust Pooled Account despite the fact that, according to the record in this case, this account was held in trust by Sentinel Trust in a fiduciary capacity.¹ ASLLP and Chancellor objected to the use of these fiduciary assets for the payment of the Receiver's expenses pursuant to T.C.A. § 45-2-1502(f). At the hearing of this motion on July 12, 2004, the Receiver agreed to pay the expenses from fees received from recoveries of defaulted bond issues. However, it expressly reserved the right to argue whether it could collect its expenses from the SunTrust Pooled Account or any other fiduciary asset.

4. With respect to the PE Transfer Motion and the FIA Transfer Motions, the Receiver readily acknowledges that these assets are fiduciary assets. It seeks to differentiate these assets from the assets in the SunTrust Pooled Account by representing that they were always segregated. Thus, as the basis for PE Transfer Motion, the Receiver represented through

¹ According to page 2 of the FIA Transfer Motion, "The pre-May 18th fiduciary investment holdings, which are set forth in the attachment to the Lamb Affidavit are shown as fiduciary assets held by Sentinel Trust." See also Affidavit of Wade McCullough, dated June 17, 2004, Exhibit A wherein this account is referenced as the "Trust Company's Fiduciary Cash Position" and the "SunTrust Fiduciary Balance."

the Affidavits of Vivian Lamb ("Lamb Aff.") that the personal estate assets were "held separately and always on behalf of the identified estate or the identified personal trust." PE Transfer Motion, p. 4, (citing Lamb Aff. ¶ 4). Likewise in the FIA Transfer Motion, the Receiver represented that "the amounts set forth and held in the noted fiduciary investment accounts have always been maintained separately and have always been held in conjunction with a specific bond issue." FIA Transfer Motion, p. 1 (citing Lamb Aff. ¶ 3-4).

5. In its objections to the PE Transfer Motion and the FIA Transfer Motions, ASLLP stated that if those assets have always been maintained separately on a continuous basis since the opening of those accounts, then it would have no objection to the transfer. ASLLP Objection ¶ 5.

6. Pursuant to the July 19 Orders, this Court allowed ASLLP and Chancellor to depose Vivian Lamb to investigate the matters set forth in her affidavit. At that deposition, which took place on July 12, 2004, ASLLP and Chancellor learned that most, if not all, of the fiduciary assets referenced in Ms. Lamb's affidavits had at some time been in the SunTrust Pooled Account.²

7. The Receiver will continue to incur expenses, and it is not known whether the fees recovered from defaulted bonds will cover these expenses in the future.

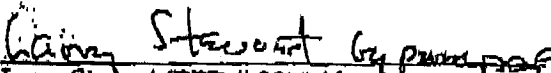
8. Based on the foregoing, if the July 19 Orders are allowed to stand as written, the fiduciary assets subject to the PE Transfer Motion and the FIA Transfer Motion will leave the control of the Receiver and this Court. If the Trustee is then (contrary to T.C.A. § 45-2-1502(f)), allowed to recover its expenses out of "fiduciary assets," the beneficiaries with interests in the SunTrust Pooled Account, whose money happened to be in the account on May 18, will be

² Attached hereto as Exhibit A is a copy of the Confidentiality Agreement that the Receiver required ASLLP to sign as a precondition to taking and attending the deposition of Ms. Lamb. Based on this agreement, ASLLP and Chancellor have requested a court order allowing the transcript of the deposition and the exhibits thereto to be filed herein under seal. ASLLP and Chancellor will submit the deposition in support of this motion and request that the Court allow specific citations to the transcript and exhibits at the hearing of this motion.

forced to pay a disproportionate amount of the cost of the administration of this Receivership merely based on the happen stance that their funds happened to be in the SunTrust Pooled Account on May 18.

WHEREFORE, ASLLP and Chancellor request that the Court amend the July 19 Orders to provide that the transfers contemplated therein are not to take place unless the Receiver agrees or this Court orders that the Receiver will not seek to collect fees or expenses from assets held by the Receiver in a fiduciary capacity.

Respectfully submitted,



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